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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re DANIEL P., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL P. ,

Defendant and Appellant.

F077753

(Super. Ct. No. 16CEJ600143-2)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. F. Brian Alvarez, Judge.

Jason Szydlik, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Lewis A. Martinez, and Calvin M. Cox II, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Levy, Acting P.J., Franson, J. and DeSantos, J.

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INTRODUCTION

Appellant Daniel P. challenges his juvenile adjudication for residential burglary on the grounds of insufficiency of the evidence. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On March 27, 2018, the Fresno County District Attorney filed a Welfare and Institutions Code section 602 petition alleging Daniel violated Penal Code¹ sections 459 and 460, subdivision (a), residential burglary. It was alleged that at the time of the offense, a person who was not an accomplice was present in the home and the offense was therefore a felony pursuant to section 667.5, subdivision (c)(21).

Theodore Mort testified at the contested jurisdiction hearing that he was living on Ellery Avenue on March 19, 2018. That morning, he heard a loud knock and “some rings” of the doorbell. He heard another knock and another ring of the doorbell. Mort got up to head to the front door and as he passed a window, saw an individual walking across his front lawn. The individual was an African-American male, who walked across Mort’s front yard and then climbed into a “blueish-silver-ish BMW type car.” The man was wearing a dark jacket, with a red or orange stripe on the jacket.

Mort went back to his computer but heard a loud noise and went to investigate. He saw two males inside the gate of his yard. The males would have had to open the closed gate to get inside. Mort thought they were going to try and break into his house, so he went to his bedroom to retrieve his firearm. As he was walking to the bedroom, Mort heard a loud bang that shook the house; it sounded “like somebody just kicked in a door.”

Mort went out the front door with his firearm and walked to the gate, which had been closed. Mort had his gun in one hand and tried opening the gate with his other. An

¹ References to code sections are to the Penal Code, unless otherwise specified.

African-American individual on the other side of the gate grabbed the gate and held it closed. Mort managed to get the gate open and saw two individuals; the second individual had come out of his garage. The garage door had been locked.

One of the individuals had something white or silver in his hand; Mort thought it might be a handgun. Mort pointed his gun at the individuals and yelled “stop.” The individual holding the item dropped it and Mort lowered his weapon. The two individuals “took off like a shot” and jumped the fence to leave the yard. One of the individuals was about five feet eleven inches or six feet and the other individual was shorter. Both individuals were African-American.

Mort went back to the front of his house near the street and watched as the two individuals entered the street area from two houses away. Mort was yelling “home invasion burglary.” One of the individuals ran down the street and the other “disappeared” into a yard four or five houses from Mort. A neighbor climbed into his truck and took off after the individual running down the street.

Mort called 911 and it took him three tries to get through. At that point, the neighbor came back and gave Mort the license plate number of the car he saw the individuals get into and drive away. Mort passed the information along to the 911 dispatcher. After speaking with the 911 dispatcher, Mort went into his house to put his gun away and noticed the door from his garage into his house was open. It had been closed when Mort walked out his front door with his firearm.

When the police arrived, they collected the item that had been dropped by one of the individuals, which turned out to be a cell phone; took photographs of the footprints the individuals made in the backyard; dusted items for fingerprints; and documented the damage to the doors of Mort’s house where an individual had apparently broken into the garage and then into the house.

Mort identified Daniel as one of the individuals participating in the break-in of his house.

Fresno Police Detective Haywood Irving investigated the case. Irving had the cell phone that was recovered subjected to a forensic analysis. The number of the cell phone was recovered, and that phone number was connected to the Facebook page of James Y. A search of police department records also showed that the phone number was connected to James.

Irving had a prior burglary case where James was a Facebook friend of that suspect. Irving began searching for Facebook friends James and the other suspect had in common; Daniel was one such Facebook friend. Irving also checked the license plate number in police records and found that James had been contacted on February 7th and February 17th in that vehicle, the month before Mort's home was burglarized. James told officers in February that he had recently purchased the vehicle. Daniel was a passenger in the vehicle with James on both the 7th and 17th of February.

Based on all this information, Irving began monitoring the Facebook pages of James and Daniel. On March 20, 2018, James posted on Facebook that he had lost his cell phone. James also posted that he lost his chain and his grill. Irving testified that a grill is a metal mouthpiece that is worn in the mouth like a football mouthpiece.

Irving then retraced the route where the suspects fled from Mort's house; Irving was looking for the grill and chain. Irving found the grill. Forensic testing of the grill revealed DNA that was a match to James's DNA. Irving also canvassed the area looking for homeowners with security cameras. He found a home on Vista and one on Tenaya with cameras. Irving was able to speak with the homeowner on Vista, who agreed to provide the security video for the relevant time frame to Irving. The video was in fact provided to the police department and Irving reviewed the video. Irving also obtained relevant video from the homeowner on Tenaya.

Irving made numerous still photographs from the video obtained from the homeowner on Tenaya. He also reviewed streaming video from Facebook of James and Daniel. Daniel was in a streaming video posted on March 19, 2018.

Irving compared the still photographs taken from the Tenaya video to the photographs and video of Daniel on Facebook. He also used a booking photograph of Daniel taken in 2017 for comparison. Irving determined that based upon the comparison materials, Daniel was one of the suspects shown in the video from the Tenaya address.

Irving submitted a probable cause declaration for the arrest of James and Daniel and created a bulletin indicating James and Daniel were suspects in the burglary. A few days later he received a phone call that traffic officers had stopped and detained Daniel and James in a silver BMW matching the license plate of the vehicle in which the burglary suspects had driven away.

Irving interviewed Daniel after his arrest. Daniel claimed he was not involved in the burglary at the Mort residence. On the morning of March 19, 2018, Daniel claimed he was with his girlfriend, but would not provide her name. When asked during what time on March 19, 2018, he was with his girlfriend, Daniel could not provide any time frame.

The juvenile court found the allegations against Daniel true and sustained the petition. Daniel was adjudged a ward of the court, placed on probation, and ordered into custody for 90 days.

Daniel filed a timely notice of appeal on July 2, 2018.

DISCUSSION

Daniel's sole challenge on appeal is that there is insufficient evidence to sustain the true finding for residential burglary because there is inadequate evidence identifying him as one of the perpetrators. He is incorrect.

Standard of Review

In reviewing a challenge to the sufficiency of the evidence, appellate courts review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a

reasonable doubt. In cases where the People rely primarily on circumstantial evidence, the standard of review is the same. (*People v. Solomon* (2010) 49 Cal.4th 792, 811, citing *People v. Thomas* (1992) 2 Cal.4th 489, 514.) An appellate court must accept logical inferences the jury may have drawn from the evidence even if the appellate court would have concluded otherwise. (*People v. Solomon, supra*, 49 Cal.4th at pp. 811-812.)

“Before the judgment of the trial court can be set aside for insufficiency of the evidence to support the verdict of the jury, it must clearly appear that upon no hypothesis what[so]ever is there sufficient substantial evidence to support it.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) “ ‘Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.’ ” (*People v. Lee* (2011) 51 Cal.4th 620, 632.)

Evidence Establishing Identity

“The sufficiency of the evidence of identification is generally a question for the trier of the facts.” (*People v. Wiest* (1962) 205 Cal.App.2d 43, 45.) “In order to sustain a conviction the identification of the defendant need not be positive.” (*Ibid.*) “The identification of the perpetrator of an offense may be established entirely by [circumstantial] evidence.” (*People v. Barnum* (1957) 147 Cal.App.2d 803, 805.)

Here, Daniel was vague about his whereabouts at the time of the Mort burglary; he claimed to be with a girlfriend but refused to provide her name. Although Mort was unable to identify Daniel from a photo lineup, he identified Daniel in court as one of the perpetrators.

Daniel conceded that James was one of the perpetrators. James’s BMW was used by the perpetrators to flee the scene of the burglary; Daniel was contacted by police twice in the month before the burglary, both times while he was in the BMW; and Daniel was

arrested with James in the BMW a few days after the burglary. The juvenile court found this to be “extremely strong circumstantial evidence” that Daniel was one of those depicted in the homeowners’ videos.

Irving compared video and photographs of Daniel found on Facebook, and a booking photograph of Daniel, to the videos obtained from the homeowners and opined that Daniel was one of the perpetrators. The juvenile court noted that Daniel had the same haircut, head shape, forehead, and jawline as the person in the video.

The combination of Mort’s testimony; the homeowner videos; the photographs of Daniel from Facebook and a booking photograph; Irving’s testimony as to his conclusions from comparing the homeowner videos and photographs of Daniel; Daniel has the same haircut, head shape, forehead, and jawline as the perpetrator in the video; the three instances where Daniel is contacted by police while in James’s BMW; that James’s BMW was the getaway car; and that Daniel is vague and has no explanation for his whereabouts at the time of the burglary, combined, constitute sufficient circumstantial evidence establishing that Daniel was one of the perpetrators of the Mort burglary. (*People v. Lee, supra*, 51 Cal.4th at p. 632.)

That Daniel disagrees with the juvenile court’s finding is not a basis for rejecting the juvenile court’s finding that sufficient evidence establishes beyond a reasonable doubt Daniel was one of the perpetrators of the Mort burglary. (*People v. Wiest, supra*, 205 Cal.App.2d at p. 45.)

DISPOSITION

The jurisdictional findings and disposition order are affirmed.